

Appln No. 10/790,375

Amdt date November 8, 2004

Reply to Office action of September 24, 2004

REMARKS/ARGUMENTS

This is in response to the Office action mailed September 24, 2004.

On page 2 of the Office action, the Examiner states that restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 3, 4, 6-9, drawn to footwear, classified in class 36, subclass 11.5.

II. Claims 10-29, drawn to a method of producing a footwear, classified in class 12, subclass 142R.

Applicant notes that claims 1-9 were previously cancelled in a preliminary amendment filed on February 29, 2004. Accordingly, the restriction requirement is moot. Claims 10-29 remain in the application and the status identifiers have been corrected. Claims 30-33 are added to more completely cover certain aspects of the invention. Claims 30-31 find support at page 7, lines 31-34 of the specification and claims 32-33 find support at page 5, lines 25-35 of the specification.

On page 3 of the Office action, the Examiner states that the application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: figures 1-6

Species II: figure 7

Species III: figures 8, 9

Species IV: figures 10, 11, 12

Appln No. 10/790,375

Amdt date November 8, 2004

Reply to Office action of September 24, 2004

Applicant elects species 1: figures 1-6 for further prosecution on the merits. Claims 10-12 and 14-33 read on species I.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

By 

Mark Garscia

Reg. No. 31,953

626/795-9900

MEG/cks

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1 **SQUIRE, SANDERS & DEMPSEY L.L.P.**  
Nathan Lane III (State Bar No. 50961)  
2 David B. Abel (State Bar No. 156744)  
Stanley H. Thompson, Jr. (State Bar No. 198825)  
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6 Attorneys for Defendants/Counterclaimants  
WAL-MART STORES, INC. and  
7 BCNY INTERNATIONAL, INC.

8 Edward R. Schwartz, (State Bar No. 147553)  
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11 Attorneys for Plaintiff

12 R & S TRADING COMPANY, INC. CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 SOUTHERN DIVISION

16  
17 R & S TRADING COMPANY,  
18 INC.,

19 Plaintiff,

20 vs.

21 WAL-MART STORES, INC. and  
BCNY INTERNATIONAL, INC.,

22 Defendants.  
23

24 Defendants Wal-Mart Stores, Inc. ("Wal-Mart") and BCNY International,  
25 Inc. ("BCNY") (collectively, "Defendants"), have moved for a stay of the instant  
26 action pending resolution of a Reexamination of the patent-in-suit, United States  
27 Patent No. 6,766,598 (the "'598 Patent-in-Suit") and Plaintiff R & S Trading  
28 Company, Inc. (R & S) does not oppose the Motion

**FILED**

OCT 18 2004

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
BY *JB* DEPUTY

**LODGED**

SEP 30 2004

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

Priority  
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OCT 19 2004

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Case No. SA CV 04-0894 GLT (RCx)

~~PROPOSED~~ ORDER STAYING  
ACTION PENDING  
REEXAMINATION OF THE  
PATENT-IN-SUIT

Judge: The Honorable Gary L. Taylor

Date Oct 25 2004

Dep 100

Time 10:00 AM

1 Based on the Motion, and the Court having consider<sup>d</sup> the issues addressed  
2 therein, it is hereby ordered that the Motion is **GRANTED**.

3 This action is **STAYED** pending a final determination on the Reexamination  
4 filed in the U.S. Patent and Trademark Office ("PTO"), Reexam Control Number  
5 09/007,172. The parties shall advise the court of the progress of the Reexamination  
6 at least every <sup>6</sup>~~12~~ months. Hearing set 10/25/04 is off calendar  
as GRANTED.

7 IT IS SO ORDERED.

8 October 18, 2004

9  
10 Honorable Gary L. Taylor  
United States District Judge

11 Submitted by:

12  
13 SQUIRE, SANDERS & DEMPSEY L.L.P.

14  
15 September 29, 2004

16 By: 

David B. Abel

17 Attorneys for Defendants/Counterclaimants  
18 WAL-MART STORES, INC. and  
19 BCNY INTERNATIONAL, INC.

20 CHRISTIE PARKER & HALE, LLP

21 September 29, 2004

22 By: 

Edward R. Schwartz

23 Attorneys for Plaintiffs  
24 R & S TRADING COMPANY, INC.

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**PROOF OF SERVICE**

I, Shelia R. Sanders, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 801 South Figueroa Street, 14th Floor, Los Angeles, CA 90017-5554. On September 29, 2004, I served the within documents:

**[PROPOSED] ORDER STAYING ACTION PENDING REEXAMINATION  
OF THE PATENT-IN-SUIT**

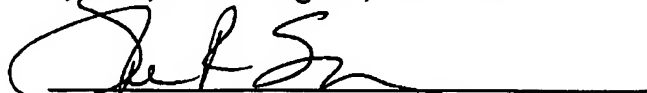
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by causing personal delivery by First Legal Services of the document(s) listed above to the person(s) at the address(es) set forth below.

Edward R. Schwartz, Esq.  
Christie, Parker & Hale, LLP  
350 West Colorado Boulevard, Suite 500  
P.O. Box 7068  
Pasadena, CA 91109-7068  
Tel: (626) 795-9900  
Fax: (626) 577-8800

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 29, 2004, at Los Angeles, California.



Shelia R. Sanders

**COPY**

**FILED**

2004 SEP -9 PM 2:29

U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

1 **EDWARD R. SCHWARTZ, CA Bar No. 147553**  
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3 **350 West Colorado Boulevard, Suite 500**  
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8 Attorneys for Plaintiff,  
9 R & S Trading Company, Inc.

10  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 R & S TRADING COMPANY, INC.,  
14 Plaintiff,  
15 vs.  
16 WAL-MART STORES, INC. and BCNY  
17 INTERNATIONAL, INC.,  
18 Defendants.  
19  
20 WAL-MART STORES, INC.,  
21 Counterclaimant,  
22 vs.  
23 R & S TRADING COMPANY, INC.,  
24 Counterdefendant.

Case No. SACV-04-894 GLT (RCx)

**R & S TRADING COMPANY,  
INC.'S ANSWER TO THE  
COUNTERCLAIM OF WAL-  
MART STORES, INC.**

25 Counterdefendant R & S Trading Company, Inc. ("R & S") responds to the  
26 allegations contained in the Counterclaim of Wal-Mart Stores, Inc. as follows.

27 1. Paragraph 1 of the Counterclaim does not contain factual allegations  
28 which require response.

2. R & S admits the allegations contained in paragraph 2 of the

1 Counterclaim.

2 3. R & S admits the allegations contained in paragraph 3 of the  
3 Counterclaim.

4 4. R & S admits the allegations contained in paragraph 4 of the  
5 Counterclaim.

6 5. R & S incorporates herein its responses to paragraphs 1 through 4  
7 above.

8 6. R & S denies the allegations contained in paragraph 6 of the  
9 Counterclaim.

10 7. Paragraph 7 of the Counterclaim does not contain factual allegations  
11 which require response. To the extent that the paragraph is deemed to contain  
12 factual allegations which require response, R & S denies such allegations.

13 8. R & S admits the allegations contained in paragraph 8 of the  
14 Counterclaim.

15 9. R & S incorporates herein its responses to paragraphs 1 through 8  
16 above.

17 10. R & S denies the allegations contained in paragraph 10 of the  
18 Counterclaim.

19 11. Paragraph 11 of the Counterclaim does not contain factual  
20 allegations which require response. To the extent that the paragraph is deemed to  
21 contain factual allegations which require response, R & S denies such allegations.

22 12. R & S admits the allegations contained in paragraph 12 of the  
23 Counterclaim.

24 WHEREFORE, R & S prays that Wal-Mart's Counterclaim be dismissed in  
25 its entirety and that R & S be awarded its costs, including attorney's fees, incurred  
26 in defense of the Counterclaim.

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Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP.

DATED: September 8, 2004

By   
Edward R. Schwartz  
Attorneys for Plaintiff,  
R & S Trading Company, Inc.

BLV PASS83184.1-\*09/8/04 11:09 AM



1  
2  
3 **CERTIFICATE OF SERVICE**

4 I certify that on September 9, 2004, pursuant to Federal Rules of Civil Procedure, a true  
5 and correct copy of the foregoing document described as **R & S TRADING COMPANY,**  
6 **INC.'S ANSWER TO THE COUNTERCLAIM OF WAL-MART STORES, INC.** was  
7 served on the parties in this action by U.S. Mail, first class, postage prepaid, addressed as  
8 follows:

9 Nathan Lane III, Esq.  
10 David B. Abel, Esq.  
11 Stanley H. Thompson, Esq.  
12 Mark N. Hurvitz, Esq.  
13 801 S. Figueroa, 14th Floor  
14 Los Angeles, CA 90017-5554

15 Telephone: (213) 624-2500  
16 Facsimile: (213) 623-4581

17 I declare that I am employed by a member of the bar of this Court, at whose direction  
18 this service was made.

19 Executed on September 9, 2004 at Pasadena, California.

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Betty L. Venuti

**RECEIVED**

**SEP 01 2004**

**Christie, Parker & Hale, LLP**

**SQUIRE, SANDERS & DEMPSEY L.L.P.**  
Nathan Lane III (State Bar No. No. 50961)  
David B. Abel (State Bar No. 156744)  
Stanley H. Thompson (State Bar No. 198825)  
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Attorneys for Defendant/Counterclaimant  
**WAL-MART STORES, INC.**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**R & S TRADING COMPANY,  
INC.,**

**Plaintiff,**

**vs.**

**WAL-MART STORES, INC. and  
BCNY INTERNATIONAL, INC.,**

**Defendants.**

**Case No. SA CV 04-0894 GLT (RCx)**

**WAL-MART STORES, INC.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT;**

**COUNTERCLAIM FOR  
DECLARATORY JUDGMENT OF  
INVALIDITY AND NON-  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

**And Related Counterclaims.**

**ANSWER AND COUNTERCLAIMS**

1 Wal-Mart Stores, Inc. ("Wal-Mart"), for itself and no other party, hereby  
2 answers the Complaint filed by Plaintiff R & S Trading Company, Inc. ("R & S")  
3 as follows:

#### 4 JURISDICTION

5 1. In response to paragraph 1 of the Complaint, Wal-Mart admits that the  
6 Complaint purports to allege a claim for patent infringement and that jurisdiction  
7 over this federal claims is conferred on this Court by 28 U.S.C. § 1338(a). Except  
8 as expressly so admitted, Wal-Mart denies the allegations of paragraph 1.

9 2. In response to paragraph 2 of the Complaint, Wal-Mart denies that  
10 venue as to Wal-Mart is proper in this judicial district. Wal-Mart is without  
11 knowledge and information sufficient to respond to the remaining allegations of  
12 paragraph 2 and on that basis denies those allegations.

#### 13 PARTIES

14 3. In response to paragraph 3 of the Complaint, Wal-Mart is without  
15 knowledge and information sufficient to respond to the allegations of paragraph 3  
16 therein and on that basis denies those allegations.

17 4. In response to paragraph 4 of the Complaint, Wal-Mart admits the  
18 allegations of paragraph 4.

19 5. In response to paragraph 5 of the Complaint, Wal-Mart is without  
20 knowledge and information sufficient to respond to the allegations of paragraph 5  
21 therein and on that basis denies those allegations.

#### 22 FACTUAL BACKGROUND

23 6. In response to paragraph 6 of the Complaint, Wal-Mart is without  
24 knowledge and information sufficient to respond to the allegations of paragraph 6  
25 and on that basis denies those allegations.

26 7. In response to paragraph 7 of the Complaint, Wal-Mart is without  
27 knowledge and information sufficient to respond to the allegations of paragraph 7  
28 and on that basis denies those allegations.

1           8. In response to paragraph 8 of the Complaint, Wal-Mart admits that  
2 attached as Exhibit A to the Complaint is a copy of United States Patent No.  
3 6,766,598 (the "'598 Patent"), entitled "Water-Resistant and Floatable Footwear  
4 and Method of Manufacture Thereof," that the first page of the '598 Patent  
5 indicates that it issued on July 27, 2004 from Application No. 10/264,015, that the  
6 first page of the '598 Patent indicates that Application No. 10/264,015 was filed on  
7 October 3, 2002, and that the first page of the '598 Patent indicates that the  
8 inventors of the subject matter of the '598 Patent are Mary K. Boncutter and Wilson  
9 Chan Nan Chen, and that the first page of the '598 Patent indicates that the '598  
10 Patent was assigned to R & S Trading Company, Inc. Except as so admitted,  
11 Wal-Mart denies the remaining allegations of paragraph 8.

12           9. In response to paragraph 9 of the Complaint, Wal-Mart admits that  
13 representatives of R & S provided Wal-Mart with notice of the pending application  
14 that matured into the '598 Patent and asserted that a particular sandal offered for  
15 sale by Wal-Mart, which Wal-Mart understands to be the only sandal now accused  
16 of infringement, would infringe the patent to be issued from such pending  
17 application. Except as so admitted, Wal-Mart denies the allegations of paragraph 9.

18           10. In response to paragraph 10 of the Complaint, Wal-Mart denies the  
19 allegations of paragraph 10.

20           11. In response to paragraph 11 of the Complaint, Wal-Mart denies the  
21 allegations of paragraph 11.

22           12. In response to paragraph 12 of the Complaint, Wal-Mart denies the  
23 allegations of paragraph 12.

24           13. In response to paragraph 13 of the Complaint, Wal-Mart denies the  
25 allegations of paragraph 13.

26           14. In response to paragraph 14 of the Complaint, Wal-Mart denies the  
27 allegations of paragraph 14.  
28

1           15. In response to paragraph 15 of the Complaint, Wal-Mart denies the  
2 allegations of paragraph 15.

3           16. In response to paragraph 16 of the Complaint, Wal-Mart denies the  
4 allegations of paragraph 16.

5                               **AFFIRMATIVE DEFENSES**

6           For its Affirmative Defenses to R & S's Complaint, Wal-Mart alleges as  
7 follows:

8                               **FIRST AFFIRMATIVE DEFENSE**

9           17. R & S's Complaint fails to state a claim upon which relief can be  
10 granted.

11                              **SECOND AFFIRMATIVE DEFENSE**

12           18. Wal-Mart does not infringe and has not infringed any claim of the '598  
13 Patent.

14                              **THIRD AFFIRMATIVE DEFENSE**

15           19. By reason of the actions of the purported inventor(s) in obtaining '598  
16 Patent from the United States Patent and Trademark Office, Plaintiff is estopped  
17 from asserting that the claims of the '598 Patent have a scope sufficient to cover the  
18 accused products.

19                              **FOURTH AFFIRMATIVE DEFENSE**

20           20. Upon information and belief, Plaintiff is equitably estopped from  
21 asserting any claim of infringement of the '598 Patent.

22                              **FIFTH AFFIRMATIVE DEFENSE**

23           21. Wal-Mart is informed and believe and thereon alleges that the claims  
24 of the '598 Patent are each invalid, void, and/or unenforceable in their entireties  
25 under Title 35 of the United States Code for one or more of the following reasons:

26                   (a) the purported inventor(s) abandoned the alleged invention;  
27  
28

(b) the purported inventor(s) did not invent the subject matter of the '598 Patent and were not the true or sole inventor(s) of the subject matter in the '598 Patent;

(c) the subject matter claimed in the '598 Patent is not novel;

(d) the subject matter claimed in the '598 Patent was known or used by others in this country before the dates of the alleged invention of the claimed subject matter of the '598 Patent;

(e) the products described and claimed in the '598 Patent were each described in a printed publication and/or sold or offered for sale more than one year before the filing date of the application for the '598 Patent;

(f) the alleged invention claimed in the '598 Patent was patented or described in United States Patents granted on applications for patents filed by others in the United States before the alleged invention thereof by the purported inventor(s);

(g) the alleged invention claimed in the '598 Patent was patented, was described in a printed publication in this or a foreign country, or was in public use or on sale in this country, more than one year before the filing date of the application for the '598 Patent;

(h) the subject matter claimed in the '598 Patent would have been obvious to one of ordinary skill in the art at the time of the alleged invention;

(i) the specification and drawings in the '598 Patent do not adequately describe the subject matter claimed in the '598 Patent, and the claims of the '598 Patent are inoperable;

(j) the purported inventor(s) failed to disclose material information available to them to the United States Patent and Trademark Office which would have affected the examination of the '598 Patent, and more particularly, the existence of prior art known to the purported inventor(s), their attorneys, and/or their agents, which prior art would have been material to the patentability of

1 pending claims if properly disclosed to the Examiner in the United States Patent  
2 and Trademark Office, yet the full scope of the teachings of the known and  
3 undisclosed prior art was not disclosed to the United States Patent and Trademark  
4 Office in violation of the duty of disclosure of the inventor(s) pursuant to 37 CFR  
5 1.56, and with the intent to obtain allowance of the claims of the applications  
6 knowing that they were invalid.

7 (k) the '598 Patent does not particularly point out and distinctly  
8 claim the invention which the purported inventor(s) claim as the invention of the  
9 '598 Patent;

10 (l) the '598 Patent specifically does not disclose the best mode  
11 known to the purported inventor(s) for the alleged invention;

12 (m) the '598 Patent is invalid for double patenting; and/or

13 (n) the claims in the '598 Patent are excessively vague, indefinite  
14 and/or they are inoperable and do not distinctly point out and define the alleged  
15 invention.

## 16 COUNTERCLAIMS

17 Defendant/Counterclaimant Wal-Mart for its Counterclaims against  
18 Plaintiff/Counterclaim Defendant R&S Trading Company, Inc., complains and  
19 alleges as follows:

20 1. These Counterclaims arise under the patent laws of the United States,  
21 35 U.S.C. §271, et seq., and the declaratory judgment provisions of 28 U.S.C.  
22 §§2201 and 2202. This Court's jurisdiction of the subject matter of these  
23 Counterclaims is based on 28 U.S.C. §1338. Venue in this district is based upon 28  
24 U.S.C. §1391.

25 2. Wal-Mart is a Delaware corporation.

26 3. On information and belief based on its Complaint, R & S is a  
27 California company having a principal place of business in this judicial district.  
28

1           4.     A justiciable controversy exists between R & S on the one hand and  
2 Wal-Mart on the other hand in that, by its Complaint, R & S has alleged that it is  
3 the assignee of the '598 Patent, that the '598 Patent is valid, and that Wal-Mart has  
4 infringed such patent. Wal-Mart, by its Answer and these Counterclaims, denies  
5 those allegations.

6                                   **FIRST COUNTERCLAIM**

7                                   (Declaratory Judgment—Invalidity)

8           5.     Wal-Mart incorporates each of the foregoing paragraphs by reference  
9 herein.

10          6.     On information and belief, the '598 Patent and all claims thereof are  
11 unenforceable and/or invalid under the provisions of 35 U.S.C. §§101, 102, 103  
12 and/or 112.

13          7.     By this Counterclaim, Wal-Mart seeks a declaratory judgment that the  
14 '598 Patent and all claims thereof are unenforceable and/or invalid under the  
15 provisions of 35 U.S.C. §§101, 102, 103 and/or 112.

16          8.     A judicial declaration is necessary and appropriate at this time in order  
17 that Wal-Mart may ascertain their rights and duties with respect to the conduct  
18 which R & S has alleged infringes the '598 Patent.

19                                   **SECOND COUNTERCLAIM**

20                                   (Declaratory Judgment—Non-infringement)

21          9.     Wal-Mart incorporates each of the foregoing paragraphs by reference  
22 herein.

23          10.    On information and belief, no claim of the '598 Patent can be validly  
24 construed to be infringed by any product that is or has been used or sold by  
25 Defendant/Counterclaimant.

26          11.    By this Counterclaim, Wal-Mart seeks a declaratory judgment that no  
27 claim of the '598 Patent can be validly construed to be infringed by any product  
28 that is or has been manufactured, used, or sold by Defendant/Counterclaimant.



12. A judicial declaration is necessary and appropriate at this time in order that Wal-Mart may ascertain its rights and duties with respect to the conduct which R & S has alleged infringes the '598 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, Wal-Mart prays for judgment against Plaintiff/Counterclaim Defendant as follows:

A. That a final judgment be entered in favor of Wal-Mart on Plaintiff's claims holding that the claims of the '598 Patent are invalid and/or unenforceable, and that Wal-Mart does not infringe the '598 Patent;

B. That Plaintiff be ordered to pay to Wal-Mart its costs, expenses, disbursements, and reasonable attorneys' fees under 35 U.S.C. §285, and the equitable powers of the Court;

C. That Plaintiff take nothing on its Complaint;

D. That a final judgment be entered under the counterclaims declaring that the '598 Patent and all claims thereof are unenforceable and/or invalid under the provisions of 35 U.S.C. §§101, 102, 103 and/or 112;

E. That a final judgment be entered under the counterclaims declaring that no claim of the '598 Patent can be validly construed to be infringed by any product manufactured, used, or sold by Defendant/Counterclaimant; and

F. That Wal-Mart has such other and further relief as the Court may deem appropriate.

Dated: September 1, 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

By:   
David B. Abel

Attorneys for Defendant/Counterclaimant:  
WAL-MART STORES, INC.

**DEMAND FOR JURY TRIAL**

Wal-Mart Stores, Inc. hereby demands a jury trial on all claims for relief.

Dated: September 1, 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: 

David B. Abel

Attorneys for Defendant/Counterclaimant:  
WAL-MART STORES, INC.

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**PROOF OF SERVICE**

I, June L. Etheridge, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 801 South Figueroa Street, 14th Floor, Los Angeles, CA 90017-5554. On September 1, 2004, I served the within documents:

**WAL-MART STORES, INC.'S ANSWER AND AFFIRMATIVE  
DEFENSES TO COMPLAINT; COUNTERCLAIM FOR DECLARATORY  
JUDGMENT OF INVALIDITY AND NON-INFRINGEMENT - DEMAND  
FOR JURY TRIAL**

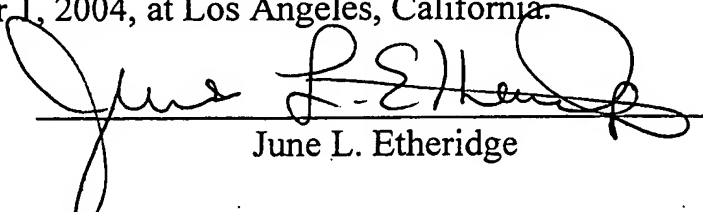
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☒ by causing personal delivery by First Legal Services of the document(s) listed above to the person(s) at the address(es) set forth below.

Edward R. Schwartz, Esq.  
Christie, Parker & Hale, LLP  
350 West Colorado Boulevard, Suite 500  
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Pasadena, CA 91109-7068  
Tel: (626) 795-9900  
Fax: (626) 577-8800

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 1, 2004, at Los Angeles, California.

  
June L. Etheridge

1 **SQUIRE, SANDERS & DEMPSEY L.L.P.**  
2 Nathan Lane III (State Bar No. No. 50961)  
3 David B. Abel (State Bar No. 156744)  
4 Stanley H. Thompson (State Bar No. 198825)  
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9 Facsimile: (213) 623.4581

10  
11 Attorneys for Defendant  
12 BCNY INTERNATIONAL, INC.  
13  
14

**RECEIVED**

AUG 3 1 2004

Christie, Parker & Hale, LLP

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA  
13 SOUTHERN DIVISION  
14

15 R & S TRADING COMPANY,  
16 INC.,

17 Plaintiff,

18 vs.

19 WAL-MART STORES, INC. and  
20 BCNY INTERNATIONAL, INC.,

21 Defendants.  
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Case No. SA CV 04-0894 GLT (RCx)

**DEFENDANT BCNY  
INTERNATIONAL, INC.'S ANSWER  
AND AFFIRMATIVE DEFENSES TO  
COMPLAINT;**

**DEMAND FOR JURY TRIAL**

1 BCNY International, Inc. ("BCNY"), for itself and no other party, hereby  
2 answer the Complaint filed by Plaintiff R & S Trading Company, Inc. ("R & S") as  
3 follows:

#### 4 JURISDICTION

5 1. In response to paragraph 1 of the Complaint, BCNY admits that the  
6 Complaint purports to allege a claim for patent infringement and that jurisdiction  
7 over this federal claim is conferred on this Court by 28 U.S.C. § 1338(a). Except as  
8 expressly so admitted, BCNY denies the allegations of paragraph 1.

9 2. In response to paragraph 2 of the Complaint, BCNY denies that venue  
10 as to BCNY is proper in this judicial district. BCNY is without knowledge and  
11 information sufficient to respond to the remaining allegations of paragraph 2 and on  
12 that basis denies those allegations.

#### 13 PARTIES

14 3. In response to paragraph 3 of the Complaint, BCNY is without  
15 knowledge and information sufficient to respond to the allegations of paragraph 3  
16 and on that basis denies those allegations.

17 4. In response to paragraph 4 of the Complaint, BCNY is without  
18 knowledge and information sufficient to respond to the allegations of paragraph 4  
19 and on that basis denies those allegations.

20 5. In response to paragraph 5 of the Complaint, BCNY admits that  
21 BCNY is a corporation with a place of business at 350 Fifth Avenue, #729, New  
22 York, NY.

#### 23 FACTUAL BACKGROUND

24 6. In response to paragraph 6 of the Complaint, BCNY is without  
25 knowledge and information sufficient to respond to the allegations of paragraph 6  
26 and on that basis denies those allegations.

1           7. In response to paragraph 7 of the Complaint, BCNY is without  
2 knowledge and information sufficient to respond to the allegations of paragraph 7  
3 and on that basis denies those allegations.

4           8. In response to paragraph 8 of the Complaint, BCNY admits that  
5 attached as Exhibit A to the Complaint is a copy of United States Patent No.  
6 6,766,598 (the "'598 Patent"), entitled "Water-Resistant and Floatable Footwear  
7 and Method of Manufacture Thereof," that the first page of the '598 Patent  
8 indicates that it issued on July 27, 2004 from Application No. 10/264,015, that the  
9 first page of the '598 Patent indicates that Application No. 10/264,015 was filed on  
10 October 3, 2002, and that the first page of the '598 Patent indicates that the  
11 inventors of the subject matter of the '598 Patent are Mary K. Boncutter and Wilson  
12 Chan Nan Chen, and that the first page of the '598 Patent indicates that the '598  
13 Patent was assigned to R & S Trading Company, Inc. Except as so admitted,  
14 BCNY denies the remaining allegations of paragraph 8.

15           9. In response to paragraph 9 of the Complaint, BCNY admits that  
16 representatives of R&S provided BCNY with notice of the pending application that  
17 matured into the '598 Patent and asserted that a particular sandal offered for sale by  
18 defendant Wal-Mart Stores, Inc. ("Wal-Mart"), which BCNY understands to be the  
19 only sandal now accused of infringement, would infringe the patent to be issued  
20 from such pending application. Except as so admitted, BCNY denies the  
21 allegations of paragraph 9.

22           10. In response to paragraph 10, BCNY denies the allegations of  
23 paragraph 10.

24           11. In response to paragraph 11 of the Complaint, BCNY denies the  
25 allegations of paragraph 11.

26           12. In response to paragraph 12 of the Complaint, BCNY denies the  
27 allegations of paragraph 12  
28

1           13. In response to paragraph 13 of the Complaint, BCNY denies the  
2 allegations of paragraph 13

3           14. In response to paragraph 14 of the Complaint, BCNY denies the  
4 allegations of paragraph 14.

5           15. In response to paragraph 15 of the Complaint, BCNY denies the  
6 allegations of paragraph 15.

7           16. In response to paragraph 16 of the Complaint, BCNY denies the  
8 allegations of paragraph 16.

9                           **AFFIRMATIVE DEFENSES**

10           For its Affirmative Defenses to R & S's Complaint, BCNY alleges as  
11 follows:

12                   **FIRST AFFIRMATIVE DEFENSE**

13           17. R&S's Complaint fails to state a claim upon which relief can be  
14 granted.

15                   **SECOND AFFIRMATIVE DEFENSE**

16           18. BCNY does not infringe and has not infringed any claim of the '598  
17 Patent. Since the issuance of the '598 Patent, BCNY has not made, sold, used,  
18 offered for sale, imported, or disposed of any accused product and the patent rights  
19 can not reach to pre-issuance activities.

20                   **THIRD AFFIRMATIVE DEFENSE**

21           19. By reason of the actions of the purported inventor(s) in obtaining '598  
22 Patent from the United States Patent and Trademark Office, Plaintiff is estopped  
23 from asserting that the claims of the '598 Patent have a scope sufficient to cover the  
24 accused products.

25                   **FOURTH AFFIRMATIVE DEFENSE**

26           20. Upon information and belief, Plaintiff is equitably estopped from  
27 asserting any claim of infringement of the '598 Patent.  
28

1 FIFTH AFFIRMATIVE DEFENSE

2 21. BCNY is informed and believe and thereon alleges that the claims of  
3 the '598 Patent are each invalid, void, and/or unenforceable in their entirety under  
4 Title 35 of the United States Code for one or more of the following reasons:

5 (a) the purported inventor(s) abandoned the alleged invention;

6 (b) the purported inventor(s) did not invent the subject matter of the  
7 '598 Patent and were not the true or sole inventor(s) of the subject matter in the  
8 '598 Patent;

9 (c) the subject matter claimed in the '598 Patent is not novel;

10 (d) the subject matter claimed in the '598 Patent was known or used  
11 by others in this country before the dates of the alleged invention of the claimed  
12 subject matter of the '598 Patent;

13 (e) the products described and claimed in the '598 Patent were each  
14 described in a printed publication and/or sold or offered for sale more than one year  
15 before the filing date of the application for the '598 Patent;

16 (f) the alleged invention claimed in the '598 Patent was patented or  
17 described in United States Patents granted on applications for patents filed by  
18 others in the United States before the alleged invention thereof by the purported  
19 inventor(s);

20 (g) the alleged invention claimed in the '598 Patent was patented,  
21 was described in a printed publication in this or a foreign country, or was in public  
22 use or on sale in this country, more than one year before the filing date of the  
23 application for the '598 Patent;

24 (h) the subject matter claimed in the '598 Patent would have been  
25 obvious to one of ordinary skill in the art at the time of the alleged invention;

26 (i) the specification and drawings in the '598 Patent do not  
27 adequately describe the subject matter claimed in the '598 Patent, and the claims of  
28 the '598 Patent are inoperable;



(j) the purported inventor(s) failed to disclose material information available to them to the United States Patent and Trademark Office which would have affected the examination of the '598 Patent, and more particularly, the existence of prior art known to the purported inventor(s), their attorneys, and/or their agents, which prior art would have been material to the patentability of pending claims if properly disclosed to the Examiner in the United States Patent and Trademark Office, yet the full scope of the teachings of the known and undisclosed prior art was not disclosed to the United States Patent and Trademark Office in violation of the duty of disclosure of the inventor(s) pursuant to 37 CFR 1.56, and with the intent to obtain allowance of the claims of the applications knowing that they were invalid.

(k) the '598 Patent does not particularly point out and distinctly claim the invention which the purported inventor(s) claim as the invention of the '598 Patent;

(l) the '598 Patent specifically does not disclose the best mode known to the purported inventor(s) for the alleged invention;

(m) the '598 Patent is invalid for double patenting; and/or

(n) the claims in the '598 Patent are excessively vague, indefinite and/or they are inoperable and do not distinctly point out and define the alleged invention.

#### SIXTH AFFIRMATIVE DEFENSE

22. This Court lacks jurisdiction over the person of BCNY.

#### SEVENTH AFFIRMATIVE DEFENSE

23. Venue in this judicial district is improper.

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**PRAYER FOR RELIEF**

WHEREFORE, BCNY prays for judgment against Plaintiff as follows:

A. A final judgment in favor of BCNY on Plaintiff's claims holding that the claims of the '598 Patent are invalid and/or unenforceable, and that BCNY does not infringe the '598 Patent;


B. That Plaintiff be ordered to pay to BCNY its costs, expenses, disbursements, and reasonable attorneys' fees under 35 U.S.C. §285, and the equitable powers of the Court;

C. That Plaintiff take nothing on its Complaint; and

D. That BCNY have such other and further relief as the Court may deem appropriate.

Dated: August 31, 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

By:   
David B. Abel  
Attorneys for Defendant  
BCNY INTERNATIONAL, INC.

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**DEMAND FOR JURY TRIAL**

BCNY International, Inc. hereby demands a jury trial on all claims for relief.

Dated: August 31, 2004

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: 

David B. Abel

Attorneys for Defendant:  
BCNY INTERNATIONAL, INC.

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I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 801 South Figueroa Street, 14th Floor, Los Angeles, CA 90017-5554. On August 31, 2004, I served the within documents:

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☒ by causing personal delivery by First Legal Services of the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on August 31, 2004, at Los Angeles, California.

June L. Etheridge

EDWARD R. SCHWARTZ, CA Bar No. 147553  
CHRISTIE, PARKER & HALE, LLP  
350 West Colorado Boulevard, Suite 500  
Post Office Box 7068  
Pasadena, California 91109-7068  
Telephone: (626) 795-9900  
Facsimile: (626) 577-8800

Attorneys for Plaintiff,  
R & S Trading Company, Inc.

**COPY**

2004 JUL 29 PM 3:29  
CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

R & S TRADING COMPANY, INC.,

Plaintiff,

vs.

WAL-MART STORES, INC. and  
BCNY INTERNATIONAL, INC.,

Defendants.

**SACV04-894**

Case No.

**GLT**

(RCX)

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**I. JURISDICTION.**

1. This is an action for patent infringement in violation of the patent laws of the United States, 35 U.S.C. § 1, et seq. this Court has jurisdiction under 28 U.S.C. §§ 1338(a).

2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400 (b) in that Defendants reside in this judicial district.

**II. PARTIES.**

3. Plaintiff R & S Trading Company, Inc. ("R & S") is a corporation organized and existing under the laws of the State of California having a principal place of business at 17352 Von Karman Avenue, Irvine, California 90623.

4. On information and belief, Defendant Wal-Mart Stores, Inc. ("Wal-Mart") is a corporation having a place of business at 702 S.W. 8th Street,

1 Bentonville, Arkansas.

2 5. On information and belief, Defendant BCNY International, Inc.  
3 ("BCNY") is a corporation having a place of business at 350 Fifth Avenue, #729,  
4 New York, New York.

5 **III. FACTUAL BACKGROUND.**

6 6. R & S has been engaged and is presently engaged in the design and  
7 distribution of footwear.

8 7. In or about May 2001 R & S introduced a sandal having a novel  
9 construction, which sandal was designated as the "Sugar Floatie Sandal."

10 8. On October 3, 2002, R & S filed an application, Serial No.  
11 10/264,015, with the United States Patent and Trademark Office ("PTO") to  
12 obtain a patent on its original and unique sandal. The application was filed in the  
13 name of Mary K. Boncutter and Wilson Chao Nan Chen and was assigned to  
14 R & S. A patent for the sandal entitled "Water-Resistant and Floatable Footwear  
15 and Method of Manufacture Therefor," Patent Number 6,766,598 ("the '598  
16 Patent"), issued on July 27, 2004. A copy of the '598 Patent is attached hereto as  
17 Exhibit A.

18 9. During the pendency of the application which matured into the '598  
19 Patent, R & S notified both Wal-Mart and BCNY of the pending application; of  
20 allowed claims in the application; and that a particular sandal sold by BCNY to  
21 Wal-Mart and resold by Wal-Mart infringed these claims.

22 10. Notwithstanding R & S's rights in its patented sandal and notice of  
23 infringement thereof, Defendants continue to offer for sale and sell a sandal  
24 which embodies each element of at least claim 1 of the '598 Patent.

25 11. Defendants' offer for sale and sale of sandals embodying the sandal  
26 claimed in the '598 Patent has been and is without the consent or authorization of  
27 R & S.

28 12. On information and belief, Defendants have manufactured, imported,

1 offered for sale, and/or sold and continue to sell in this district and elsewhere in  
2 the United States, sandals which infringe the claims of the '598 Patent.

3 13. By their aforesaid acts, Defendants have violated 35 U.S.C. § 271 by  
4 their infringement of the '598 Patent.

5 14. On information and belief, the acts of infringement of Defendants  
6 will continue unless enjoined by this Court.

7 15. R & S is being damaged by Defendants' infringement of the '598  
8 Patent and is being and will continue to be irreparably damaged unless  
9 Defendants' infringement is enjoined by this Court. R & S does not have an  
10 adequate remedy at law.

11 16. On information and belief, Defendants' infringement of the '598  
12 Patent is and has been willful and R & S is entitled to multiple damages.

13 WHEREFORE, Plaintiff R & S demands judgment against Defendants  
14 Wal-Mart and BCNY jointly and severally as follows:

15 1. That this Court adjudge and declare:

16 a. That it has jurisdiction of the parties and of the subject matter  
17 of this action;

18 b. That United States Patent No. 6,766,598 is valid and owned by  
19 R & S; and

20 c. That Defendants have committed acts of patent infringement  
21 by their sale of a sandal which includes each limitation of at least claim 1 of the  
22 '598 Patent.

23 2. That Defendants, their officers, directors, owners, agents,  
24 representatives, employees, assigns and suppliers, and all persons acting in  
25 concert or privity with any of them be preliminarily and permanently enjoined  
26 from offering for sale or selling any sandal which infringes the '598 Patent.

27 3. That Defendants be required by mandatory injunction to deliver to  
28 R & S for destruction any and all sandals in their possession, custody or control

1 embodying unauthorized copying of R & S's patented sandal along with all  
2 tooling and dies and other things of manufacture, the sole purpose of which is to  
3 manufacture Defendants' infringing sandal.

4 4. That R & S be awarded damages covered by the acts of patent  
5 infringement of Defendants in an amount not less than a reasonable royalty  
6 pursuant to 25 U.S.C. § 284 and that thee damages so ascertained be trebled;

7 5. That Defendants pay R & S prejudgment interest;

8 6. That R & S have and recover its costs in this action, including  
9 attorney's fees; and

10 7. That R & S have such other and further relief as the court may deem  
11 just and proper.

12  
13 Respectfully submitted,

14 CHRISTIE, PARKER & HALE, LLP

15  
16 DATED: 7/29/04

17 By

Edward R. Schwartz  
Attorneys for Plaintiff,  
R & S Trading Company, Inc.

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19 BLV PAS576905.1-\*07/29/04 10:23 AM  
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Edward R. Schwartz  
Christie, Parker & Hale, LLP  
350 W. Colorado Blvd., Suite 500  
P. O. Box 7068  
Pasadena, CA 91109-7068  
626-795-9900

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

R & S TRADING COMPANY, INC.

Plaintiff(s)

v.

WAL-MART STORES, INC. and BCNY  
INTERNATIONAL, INC.

Defendant(s)

CASE NUMBER:

SAC V04-894

GLT

(RCx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney  
Edward R. Schwartz, whose address is:

CHRISTIE, PARKER & HALE, LLP  
350 W. Colorado Blvd., Suite 500  
Pasadena, California 91105

an answer to the ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-  
claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive  
of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded  
in the complaint.

CLERK, U.S. DISTRICT COURT

TERRY BAKER

SEAL

Date:

JUL 29 2004

By:

Deputy Clerk

(Seal of the Court)

SUMMONS

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**I (a) PLAINTIFFS** (Check box if you are representing yourself ☐)

R & S TRADING COMPANY, INC.

**DEFENDANTS**

WAL-MART STORES, INC. and BCNY  
INTERNATIONAL, INC.

**(b)** County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): **Orange**

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

**(c)** Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Edward R. Schwartz  
Christie, Parker & Hale, LLP  
350 W. Colorado Blvd., Suite 500  
P. O. Box 7068  
Pasadena, CA 91109-7068  
626-795-9900

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of  
Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

- |  |                            |                            |  |                            |                                       |
|--|----------------------------|----------------------------|--|----------------------------|---------------------------------------|
|  | PTF                        | DEF                        |  | PTF                        | DEF                                   |
| Citizen of This State                      | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place<br>of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                   | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place<br>of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a<br>Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:** ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

35 U.S.C. Section 1, et seq., Patent Infringement

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litig.
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/PENALTY</b>	<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 830 Patent
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 893 Environmental Matters	<b>REAL PROPERTY</b>	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 895 Freedom of Information Act	<input type="checkbox"/> 220 Foreclosure			<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 230 Rent Lease & Ejectment			<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 240 Torts to Land				<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 245 Tort Product Liability				<b>FEDERAL TAX SUITS</b>
	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
					<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

**VIII(a). IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM JS-44C, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). **RELATED CASES:** Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Appear to arise from the same or substantially identical transactions, happenings, or events;  
☐ B. Involve the same or substantially the same parties or property;  
☐ C. Involve the same patent, trademark or copyright;  
☐ D. Call for determination of the same or substantially identical questions of law, or  
☐ E. Likely for other reasons may entail unnecessary duplication of labor if heard by different judges.

**IX. VENUE:** List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Orange

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

Arkansas, New York

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

**Note:** In land condemnation cases, use the location of the tract of land involved.

**X. SIGNATURE OF ATTORNEY (OR PRO PER):** \_\_\_\_\_

Edward R. Schwartz

Date \_\_\_\_\_

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF  
OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

Edward R. Schwartz  
Christie, Parker & Hale, LLP  
350 W. Colorado Blvd., Suite 500  
P. O. Box 7068  
Pasadena, CA 91109-7068  
626-795-9900

ATTORNEYS FOR: Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

R & S TRADING COMPANY, INC.

CASE NUMBER

v.

Plaintiff(s),

WAL-MART STORES, INC. and BCNY  
INTERNATIONAL, INC.

Defendant(s)

CERTIFICATION AND NOTICE  
OF INTERESTED PARTIES  
(Local Rule 7.1-1)

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for R & S Trading Company, Inc.  
(or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest  
in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or  
recusal. (Use additional sheet if necessary.)

PARTY

CONNECTION

(List the names of all such parties and identify their connection and interest.)

R & S Trading Company, Inc.

Plaintiff

Wal-Mart Stores, Inc.

Defendant

BCNY International, Inc.

Defendant

Date

7/28/04

Sign

Edward R. Schwartz

Attorney of record for or party appearing in pro per  
R & S Trading Company, Inc.

TO: <b>Commissioner of Patents and Trademarks Washington, DC 20231</b>	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court Central, L.A. on the following ☒ Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
PLAINTIFF R & S TRADING COMPANY, INC.		DEFENDANT WAL-MART STORES, INC. and BCNY INTERNATIONAL, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,766,598 B2	July 27, 2004	R & S Trading Company, Inc.
2		
3		
4		
5		

In the above-entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above-entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK	(BY) DEPUTY CLERK	DATE
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Copy 1-Upon initiation of action, mail this copy to Commissioner Copy 3-Upon termination of action, mail this copy to Commissioner  
Copy 2-Upon filing document adding patent(s), mail this copy to Commissioner Copy 4-Case file copy